

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**LISA A. STERNADORI**

**v.**

**SCS HEALTHCARE MARKETING, INC.  
and HEALTHSTAR COMMUNICATION**

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**CIVIL ACTION**

**NO. 05-3679**

**NORMA L. SHAPIRO, S.J.**

**MARCH 6, 2007**

**MEMORANDUM AND ORDER**

This is an action for breach of employment contract brought by Lisa A. Sternadori (“Sternadori”) against her former employers, SCS Healthcare Marketing, Inc. (“SCS”) and its parent company HealthSTAR Communication (“HealthSTAR”). Sternadori is a citizen of Pennsylvania, and SCS and HealthSTAR are New Jersey corporations; Sternadori claims damages in excess of \$150,000. The court has diversity jurisdiction over this case under 28 U.S.C. § 1332. The parties have filed cross-motions for summary judgment based on interpretation of the employment contract. For the reasons stated below, defendants’ motion for summary judgment will be granted, and Sternadori’s motion for summary judgment will be denied.

**I. FACTUAL BACKGROUND**

Sternadori worked for SCS for three and a half years as an independent contractor. In 2003, Sternadori severed her employment with SCS to pursue another job. In 2004, Paul Bonavita, the SCS Executive Vice President, and Chris Sweeney, the SCS Chief Executive Officer, offered Sternadori employment as an SCS account director. Under the employment

contract at issue in this litigation, signed by Sternadori on July 14, 2004, Sternadori's employment would terminate on December 31, 2007, unless terminated earlier under the terms of the contract.

Paragraph 6 of the employment contract states:

A. Termination of Employment. This Agreement, and the obligations of the Corporation and the Employee hereunder, shall, except to the extent otherwise provided, terminate at the expiration of the Agreement pursuant to its terms, or earlier in one of the following events:

(i) By mutual agreement of the parties, with the date of termination being the date mutually agreed upon by the parties.

(ii) By death of the Employee, with the date of termination being the date of the Employee's death.

(iii) Upon the determination by the Board of Directors of the Corporation of the disability of the Employee, such that the Employee is, or will for a period of six (6) months, be unable, without unreasonable accommodation, to perform the essential functions of his position, the Corporation shall be entitled to terminate Employee's employment.

(iv) By notice of termination with cause given by the Corporation to the Employee. Upon termination by the Corporation for cause, the Termination Date shall be the date on which notice is given to the Employee. For purposes of this Agreement, the term "cause" shall mean the occurrence of any of the following:

(a) the indictment of the Employee of a crime involving a felony offense (other than a felony resulting from a traffic violation);

(b) the good faith determination by the Board of Directors of the Corporation that the Employee has (i) acted in a manner constituting fraud, theft, embezzlement, or gross negligence with respect to the Corporation, (ii) continually disregarded his duties under this Agreement despite at least 30 days prior written notice and a failure to cure such misconduct (provided that no such notice or cure period shall be required if Employee's disregard of his duties has materially and adversely affected the Corporation) or (iii) the Employee has breached his duty of loyalty to the Corporation.

(c) a judgment entered against the Corporation based on the

Employee's act or omission in violation of any law, rule or regulation regarding employee rights, sexual harassment in the workplace, sexual misconduct in the workplace, or employment discrimination;

(d) the publication of false remarks, comments, statements, whether written or oral, which disparage the Corporation or HealthSTAR, or their respective officers or directors;

(e) the willful and malicious destruction of property (other than of a de minimis nature) belonging to the Corporation or HealthSTAR; or

(f) a material breach by the Employee of this Agreement after written notice to Employee from the Corporation specifying the alleged breach and, except for a breach of Sections 10A or 10B for which no cure period is applicable, not less than 30 days to cure.

B. Effect of Termination. Upon termination of the Employee's employment hereunder, this Agreement, and all rights and obligations of the parties hereunder, shall terminate, subject to the following qualifications and limitations:

(i) In the event the Employee is terminated without cause, Employee shall be entitled to receive any unpaid salary and unused vacation that accrued prior to the date of such termination plus Employee's salary in accordance with Section 4A for the lesser of 3 months or the remainder of the employment period described in Section 2 above, payable in accordance with the Corporation's normal payroll practices; and

(ii) In the event the Employee is terminated with cause, the Corporation shall be obligated to pay to the Employee any unpaid salary and unused vacation that accrued prior to the date of such termination; and

(iii) Sections 9 and 10 of this Agreement shall survive the termination of this Agreement, for any reason, including but not limited to termination at the end of the initial term or any subsequent 1-year term, and shall remain in full force and effect as against the Employee in accordance with its terms.

Sternadori's starting salary was \$110,000.00. In January, 2005, SCS increased Sternadori's salary by 2.5% to \$112,750.00, and paid Sternadori a \$5,000.00 bonus.

On March 2, 2005, SCS terminated Sternadori's employment. SCS and HealthSTAR concede the termination of Sternadori's employment was not by mutual agreement,

and was not for “cause,” as defined by paragraph 6(A)(iv) of the employment contract. Pl’s Mtn. for SJ at 5; Defs’ Mtn. for SJ at 3. On the date Sternadori’s employment was terminated, SCS offered to pay her \$28,187.49, an amount equal to three months’ salary, provided that she sign a Separation Agreement and General Release. Sternadori refused to sign the Separation Agreement and General Release; and she was not paid three months’ salary.

Sternadori filed suit against SCS and HealthSTAR for breach of contract, breach of the covenant of good faith and fair dealing, and violation of the New Jersey Wage Payment and Collection Law, N.J.S.A. 34:11-4.1, *et seq.* She seeks compensation for lost wages, bonuses, and benefits; costs, disbursements and reasonable attorneys’ fees; prejudgment interest; and any additional just and proper relief. Sternadori now moves for summary judgment. SCS and HealthSTAR cross-move for summary judgment.

## **II. DISCUSSION**

### **A. Choice of Law**

In an action based on diversity of citizenship, the district court must apply the substantive law of the state in which it sits; this includes the state’s choice of law rules. Berg Chilling Sys., Inc. v. Hull Corp., 435 F.3d 455, 462 (3d Cir. 2006). In Pennsylvania, courts will uphold the parties’ contractual choice of law provisions to the extent that the transaction is reasonably related to the chosen forum. Churchill Corp. v. Third Century, Inc., 396 Pa.Super. 314, 324 (1990); see also 13 Pa.C.S.A. § 1105(a). “Ordinarily the law chosen must be that of a jurisdiction where a significant enough portion of the making or performance of the contract is to occur or occurs.” Id. Paragraph 11(I) of Sternadori’s employment contract states, “This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of

New Jersey applicable to contracts to be performed therein, without giving effect to the conflict of Law principles thereof.” The employment contract is reasonably related to New Jersey, since the contract governed Sternadori’s employment with and termination from SCS, a New Jersey corporation. The court will apply New Jersey contract law.

## **B. Breach of Contract**

A motion for summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The court must view all facts in a light most favorable to the non-moving party. See Gottshall v. Consol. Rail Corp., 56 F.3d 530, 533 (3d Cir. 1995). The parties agree that Sternadori signed an employment contract with SCS and HealthSTAR, and that Sternadori was terminated before December 31, 2007, the date the employment contract was to expire. They do not dispute the express terms of the employment contract; they dispute the interpretation of the terms. Decisions on the cross-motions for summary judgment on Sternadori’s breach of contract claim depend on whether the employment contract allowed SCS and HealthSTAR to terminate Sternadori before December 31, 2007, absent mutual agreement, death, disability, or enumerated cause. There are no disputed issues of material fact.

When the terms of a contract are clear and unambiguous, the court must consider only the express language of the contract in determining intent. Steuart v. McChesney, 444 A.2d 659, 661 (Pa. 1982). Paragraph 6(A) of the employment contract states that Sternadori’s employment shall, “*except to the extent otherwise provided*, terminate at the expiration of the Agreement pursuant to its terms, or earlier,” for cause, or upon mutual agreement, death, or disability [emphasis added]. Paragraph 6(B)(i) describes Sternadori’s entitlements “[i]n the

event the Employee is terminated without cause.” “Where the contract evidences care in its preparation, it will be presumed that its words were employed deliberately and with intention.” Id. at 663. The court cannot assume the contract language was chosen carelessly. Id.

The employment contract clearly provides for Sternadori’s termination without cause. The contract does not define “termination without cause,” and it does not limit termination without cause to the events of mutual agreement, death, or disability. SCS and HealthSTAR did not breach the employment contract by terminating Sternadori absent the enumerated reasons. To find otherwise would read the express language of Paragraph 6(B)(I) out of the contract by rendering it meaningless. Sternadori’s motion for summary judgment for breach of contract will be denied; SCS and HealthSTAR’s motion for summary judgment for failure to prove breach of contract will be granted.

SCS and HealthSTAR concede Sternadori is entitled to three months’ pay, plus prejudgment interest, under Paragraph 6(B)(i) of the employment contract. 7/13/06 Hr’g Tr. at 10-12. The parties agree three months severance pay is equivalent to \$28,187.49. Prejudgment interest will be calculated at a rate of six percent. The court will award Sternadori severance pay of \$28,187.49 plus interest accruing from the date of SCS’s regular payday on or immediately following March 2, 2005, to the date of entry of judgment.

**C. Good Faith and Fair Dealing<sup>1</sup>**

Every New Jersey contract contains an implied covenant of good faith and fair

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<sup>1</sup> Sternadori’s complaint asserts a breach of Pennsylvania’s implied covenant of good faith and fair dealing. At oral argument, counsel requested, and the court allowed, a reformation of the claim to assert a breach of New Jersey’s covenant of good faith and fair dealing. 7/13/06 Hr’g Tr. at 16.

dealing. Wilson v. Amerada Hess Corp., 773 A.2d 1121, 1126 (N.J. 2001). Implied covenants are as effective as express covenants. Id. The implied covenant of good faith and fair dealing cannot override an express contract term; but a party's performance under a contract may breach the implied covenant even if that performance does not violate an express term. Id. The covenant of good faith and fair dealing mandates that "neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract," id. at 1126-27; and it applies where bad faith served as a pretext for the exercise of a contractual right to terminate. Seidenberg v. Summit Bank, 791 A.2d 1068, 1078 (N.J. Super. 2002). When evaluating an alleged breach of the implied covenant of good faith and fair dealing, a court may consider: the plaintiff's inadequate bargaining power or financial vulnerability, the expectations of the parties, and the defendant's bad faith or outright dishonesty. See id. at 1074.

The parties have filed cross-motions for summary judgment on Sternadori's claim for breach of the implied covenant of good faith and fair dealing. A defendant meets the summary judgment standard when there is an absence of evidence that rationally supports the plaintiff's case. Clark v. Modern Group Ltd., 9 F.3d 321, 326 (3d Cir. 1993). Sternadori argues SCS and HealthSTAR breached the implied covenant of good faith and fair dealing by terminating Sternadori's employment in the absence of cause or any of the reasons listed in Paragraph 6(A) of the employment contract. Sternadori's termination in the absence of reasons enumerated in Paragraph 6(A) cannot, by itself, show a breach of good faith and fair dealing, because SCS and HealthSTAR were entitled to terminate Sternadori without cause by the express provision of the contract.

The evidence Sternadori has produced does not rationally support her claim for

breach of good faith and fair dealing. Sternadori claims she was not given an opportunity to negotiate her contract, but she has not produced any evidence of inadequate bargaining power. In her deposition, Sternadori stated she negotiated her salary with SCS, and the parties agreed Sternadori's salary would be equivalent to what was stated in the employment contract, plus a \$10,000 bonus. Def's Mtn. for SJ, Ex. E at 62. HealthSTAR's interrogatory answers state Sternadori signed the employment contract presented to her, without requesting changes. Pl's Mtn. for SJ, Ex. C at 7. There is no evidence that Sternadori was not allowed to negotiate the terms of her employment, or that Sternadori was coerced into signing the employment contract. Sternadori's expectations likewise do not support her claim. Sternadori's deposition testimony reveals that Sternadori expected payment through December 31, 2007, under all circumstances, notwithstanding her death, disability, or criminal activity. Def's Mtn. for SJ, Ex. E at 63-66. This expectation conflicted with the clear terms of the employment contract and was unreasonable. Sternadori's unreasonable expectations, in contravention of the express terms of the contract, cannot support her breach of good faith and fair dealing claim. Finally, Sternadori has not produced any evidence of bad faith or outright dishonesty apart from the decision to terminate her in the absence of an enumerated reason.

Sternadori argues that even if SCS and HealthSTAR had the right to terminate her without cause for an unenumerated reason, they breached their duty of good faith and fair dealing by requiring Sternadori to sign a separation agreement and general release as a prerequisite to receiving her three months severance pay. This requirement was improper because it was not a contractual prerequisite to receipt of the severance pay under Paragraph 6(B)(i). But the issue is moot because SCS and HealthSTAR already have conceded they owe Sternadori three months



severance pay plus prejudgment interest to compensate for the delay in payment.

The court will deny Sternadori's motion for summary judgment for breach of the covenant of good faith and fair dealing; the court will grant summary judgment to SCS and HealthSTAR.

**D. New Jersey Wage Payment Law**

Sternadori moves for summary judgment for violation of the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1, *et seq.*; SCS and HealthSTAR cross-move for summary judgment. The New Jersey Wage Payment Law states:

“Whenever an employer discharges an employee, or when the work of an employee is suspended as a result of a labor dispute, or when an employee for any reason whatsoever is laid off . . . the employer shall pay the employee all wages due not later than the regular payday for the pay period during which the employee's termination, suspension, or cessation of employment (whether temporary or permanent) took place, as established in accordance with section 2 of this act . . .” N.J.S.A. 34:11-4.3.

“Wages” are defined as: “the direct monetary compensation for labor or services rendered by an employee, where the amount is determined on a time, task, piece, or commission basis excluding any form of supplementary incentives or bonuses which are calculated independently of regular wages and paid in addition thereto.” N.J.S.A. 34:11-4.1. There is no disputed issue of material fact with respect to this claim; the parties agree Sternadori was terminated, and she was not paid the three months severance to which she was entitled.

Sternadori claims SCS and HealthSTAR violated the Wage Payment Law by failing to pay her severance upon termination. The New Jersey Supreme Court has not explicitly found a private right of action under the New Jersey Wage Payment Law; but courts have adjudicated civil suits brought by employees against their employers and managing officers for

wages not paid as defined in said law. See Mulford v. Computer Leasing, Inc., 759 A.2d 887, 891 (N.J. Super. 1999) (Wage Payment Law is intended to allow a private right of action for wages); cf. N.J.S.A. 34:11-4.7 (where an agreement is made in violation of the Wage Payment Law, employee may bring civil action against an employer for wages). The Wage Payment Law does not provide for statutory or punitive damages to prevailing civil litigants.<sup>2</sup> Even if Sternadori prevailed on her claim, she could at most collect wages due for labor or services rendered. SCS and HealthSTAR have conceded Sternadori is entitled to three months severance plus prejudgment interest. Whether or not a severance pay falls within the Wage Payment Law's definition of "wages," Sternadori's claim is moot. Sternadori's motion for summary judgment for violation of the New Jersey Wage Payment Law will be denied; SCS and HealthSTAR's motion for summary judgment will be granted.

### **III. CONCLUSION**

SCS and HealthSTAR are entitled to summary judgment on Sternadori's claims for breach of contract, breach of covenant of good faith and fair dealing, and violation of the New Jersey Wage Payment Law. An appropriate order follows.

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<sup>2</sup> The New Jersey Wage Payment Law does provide for sanctions where an employer is convicted of a disorderly persons offense for knowing and willful violation of the Wage Payment Law; it also provides for administrative penalties where the Commissioner of Labor finds an employer has violated the Wage Payment Law. N.J.S.A. 34:11-4.10. Neither of those circumstances is present here.

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**CIVIL ACTION**

**NO. 05-3679**

**ORDER**

**AND NOW**, this 6th day of March, 2007, upon consideration of the parties' cross-motions for summary judgment and responses, following a hearing at which counsel for all parties were heard, for the reasons stated in the accompanying memorandum, it is **ORDERED** that:

1. Plaintiff's motion for summary judgment (paper no. 16) is **DENIED**.
2. Defendants' cross-motion for summary judgment (paper no. 18) is **GRANTED**.

/s/ Norma L. Shapiro

S.J.

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**JUDGMENT**

**AND NOW**, this 6th day of March, 2007, it appearing that the parties agree plaintiff is entitled to a three month severance payment, it is **ORDERED** that **JUDGMENT IS ENTERED** in favor of Lisa A Sternadori and against SCS Healthcare Marketing, Inc. ("SCS"), and HealthSTAR Communication, in the amount of twenty-eight thousand one hundred eighty-seven dollars and forty-nine cents (\$28,187.49), plus interest at the rate of six percent (6%), accruing from the date of defendant SCS's regular payday on or immediately following March 2, 2005, to the date of entry of judgment.

/s/ Norma L. Shapiro

S.J.